

AMENDED IN ASSEMBLY JUNE 13, 2001

AMENDED IN SENATE MAY 30, 2001

AMENDED IN SENATE APRIL 25, 2001

## **SENATE BILL**

**No. 773**

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### **Introduced by Senator Speier**

(Principal coauthor: Assembly Member Jackson)

February 23, 2001

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An act to add Division 1.2 (commencing with Section 4050) to the Financial Code, relating to financial privacy.

#### LEGISLATIVE COUNSEL'S DIGEST

SB 773, as amended, Speier. Financial institutions: confidential consumer information.

Existing law provides for the regulation of banks, savings associations, credit unions, and industrial loan companies by the Department of Financial Institutions and by certain federal agencies, as specified.

This bill would enact the Financial Information Privacy Act of 2002, which would require a financial institution to provide specified notice to, and to obtain the consent of, a customer before disclosing to or sharing confidential consumer information, as defined, with any 3rd party, subject to certain exceptions. This bill would also require a financial institution, prior to using confidential consumer information provided by certain 3rd parties, to take reasonable steps to ensure that the party providing the information had previously followed similar notice and consent procedures.

This bill would provide various civil and criminal remedies and penalties for negligent, or knowing and willful violations of these



provisions. Because of the inclusion of criminal penalties, this bill would impose a state-mandated local program by creating a new crime.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Division 1.2 (commencing with Section 4050)  
2 is added to the Financial Code, to read:

3  
4 DIVISION 1.2. FINANCIAL INFORMATION PRIVACY  
5 ACT  
6

7 4050. This division shall be known and may be cited as the  
8 Financial Information Privacy Act of 2002.

9 4051. The Legislature intends for financial institutions to  
10 provide their customers notice and choice about how consumers'  
11 personally identifiable sensitive financial information is shared or  
12 sold by their financial institutions.

13 4052. For the purposes of this division:

14 (a) "Confidential consumer information" means personally  
15 identifiable data, including, but not limited to, names, addresses,  
16 telephone numbers, social security account numbers, driver's  
17 license numbers, account numbers, deposits, withdrawals, interest  
18 rates, fees and other charges, transactions, account balances,  
19 maturity dates, and payouts, with respect to the following:

20 (1) Deposit and trust accounts.

21 (2) Certificates of deposit.

22 (3) Securities holdings.

23 (4) Insurance policies.

24 (5) Any other account maintained by a consumer at a financial  
25 institution.

26 (b) "Financial institution" includes a commercial bank, trust  
27 company, savings association, industrial loan company, credit



1 union, insurance company, securities brokerage, mortgage lender,  
2 or person engaged in the business of lending money and doing  
3 business in this state.

4 4053. A financial institution shall not disclose to, or share a  
5 consumer's confidential consumer information with, any third  
6 party, including an affiliate or agent of that financial institution, or  
7 a subsidiary, unless the financial institution has provided written  
8 notice to the consumer to whom the confidential consumer  
9 information relates and unless the financial institution has  
10 obtained a written or electronic consent acknowledgment from the  
11 consumer that authorizes the financial institution to disclose or  
12 share the confidential consumer information.

13 4054. (a) A financial institution that proposes to disclose or  
14 share a consumer's confidential consumer information shall  
15 provide a written notice to the consumer that describes (1) the  
16 specific types of information that would be disclosed or shared, (2)  
17 the general circumstances under which the information would be  
18 disclosed or shared, (3) the specific types of persons or businesses  
19 that would receive the information, and (4) the specific proposed  
20 types of uses for the information.

21 (b) A financial institution shall provide notices and consent  
22 acknowledgments to consumers as separate documents that are  
23 easily identifiable and distinguishable from other documents that  
24 otherwise may be provided to a consumer.

25 (c) A consumer shall have access to his or her confidential  
26 consumer information that is proposed to be disclosed or shared in  
27 order to have an opportunity to review that information for  
28 accuracy, and to correct and supplement that information, if  
29 inaccurate.

30 4055. A financial institution that obtains confidential  
31 consumer information about one of its customers from a third  
32 party that is engaged, directly or indirectly, in activities that are  
33 financial in nature, shall, prior to using that confidential consumer  
34 information, take reasonable steps to ensure that the third party  
35 providing the information, or an affiliate or agent of that third  
36 party, has previously followed information privacy procedures  
37 that are substantially similar to the procedures contained in this  
38 division.

39 4056. (a) This division shall not apply to information that is  
40 not personally identifiable to a particular person.



(b) This division shall not prohibit the release of confidential consumer information under any of the following circumstances:

(1) If the release of information is necessary to effect, administer, or enforce a transaction requested or authorized by the consumer in connection with servicing or processing a financial product or service requested or authorized by the consumer, for debt collection or billing services, for maintaining or servicing the consumer's account with the financial institution, or for enforcing a financial obligation of the consumer arising from any transaction with the financial institution.

(2) To a governmental or regulatory agency or to a self-regulatory entity, with jurisdiction over the financial institution for examination, compliance, or other authorized purposes.

(3) To a court of competent jurisdiction.

(4) To a consumer reporting agency, as defined in Section 603 of the federal Fair Credit Reporting Act (15 U.S.C. Sec. 1681a), for inclusion in a consumer report that may be released to a third party only for a purpose permissible under Section 604 of that act (15 U.S.C. Sec. 1681b).

(5) To a state or local agency for purposes of child support enforcement.

(6) If the information is necessary to comply with federal, state, or local laws and regulations.

(7) If the information is necessary to comply with a civil, criminal, or regulatory investigation.

(8) If the information is necessary to respond to a summons or subpoena, including an administrative subpoena.

(9) When a financial institution is reporting a known or suspected instance of elder or dependent adult financial abuse or is cooperating with a local adult protective services agency investigation of known or suspected elder or dependent adult financial abuse pursuant to Article 3 (commencing with Section 15630) of Chapter 11 of Part 3 of Division 9 of the Welfare and Institutions Code.

(10) To, or in, any court, arbitration or other proceeding, or to any employee, agent, or representative for purposes of the enforcement of an obligation of the consumer, or the assignment or sale of an obligation of the consumer.





(11) If the information is necessary to evaluate, detect, or reduce the risk of fraud, identity theft, or possible criminal activities, or to protect the consumer against actual or potential, fraud, unauthorized transactions, claims, or other liability.

(c) (1) The restrictions on disclosure and use of confidential consumer information, and the requirement for *notification, disclosure, and* prior written consent of a consumer, as provided in this division, do not apply to any person or entity that meets ~~either of the following: paragraphs (2) and (3) except when confidential consumer information is shared with an affiliate, subsidiary, or third party without the consumer's consent.~~

~~(1)~~

(2) The person or entity is licensed in one or both of the following categories and is acting within the scope of the respective license:

(A) As an insurance agent, licensed pursuant to Chapter 5 (commencing with Section 1622), Chapter 6 (commencing with Section 1760), or Chapter 8 (commencing with Section 1831) of Division 1 of the Insurance Code.

(B) Is licensed to sell securities by the Securities *and* Exchange Commission.

~~(2)~~

(3) The person or entity *meets the requirements in paragraph (1) and* has a written contractual agreement ~~with a person or entity described in paragraph (1) and the contract specifies the rights and obligations of the parties in the insurance or securities transaction and explicitly limits the use of personal information about a consumer to transactions authorized by the contract that fall within the scope of the activities permitted by the licenses of the parties.~~ *with a person or entity described in paragraph (2) and the contract clearly and explicitly specifies all of the following:*

(A) *The rights and obligations of the parties in the insurance or securities transaction.*

(B) *An explicit limitation on the use of confidential consumer information about a consumer as it relates to transactions authorized by the contract and the requirements contained in this division.*

(C) *A statement that the transactions authorized by the contract fall within the scope of activities permitted by the licenses of the parties.*



1 4057. (a) Any negligent, or knowing and willful violation of  
2 this division that results in an economic loss to a customer is  
3 punishable as a misdemeanor.

4 (b) In addition to any other remedies available at law, any  
5 consumer may bring an action against any financial institution that  
6 negligently discloses or shares confidential consumer information  
7 concerning him or her in violation of this division, for either or  
8 both of the following:

9 (1) Nominal damages of one thousand dollars (\$1,000). In  
10 order to recover under this paragraph, it shall not be necessary that  
11 the plaintiff suffered or was threatened with actual damages.

12 (2) The amount of actual damages, if any, sustained by the  
13 consumer.

14 (c) (1) In addition, any financial institution that negligently  
15 discloses or shares confidential consumer information in violation  
16 of this division shall be liable, irrespective of the amount of  
17 damages suffered by the consumer as a result of that violation, for  
18 an administrative fine or civil penalty not to exceed two thousand  
19 five hundred dollars (\$2,500) per violation.

20 (2) (A) Any financial institution that knowingly and willfully  
21 obtains, discloses, or uses confidential consumer information in  
22 violation of this division shall be liable for an administrative fine  
23 or civil penalty not to exceed twenty-five thousand dollars  
24 (\$25,000) per violation.

25 (B) Any financial institution that knowingly and willfully  
26 obtains, discloses, or uses confidential consumer information in  
27 violation of this division shall be liable upon a first violation, for  
28 an administrative fine or civil penalty not to exceed two thousand  
29 five hundred dollars (\$2,500) per violation, or upon a second  
30 violation for an administrative fine or civil penalty not to exceed  
31 ten thousand dollars (\$10,000) per violation, or upon a third or  
32 subsequent violation for an administrative fine or civil penalty not  
33 to exceed twenty-five thousand dollars (\$25,000) per violation.

34 (3) Any financial institution that knowingly and willfully  
35 obtains, discloses, or uses confidential consumer information in  
36 violation of this division for financial gain shall be liable upon a  
37 first violation for an administrative fine or civil penalty not to  
38 exceed five thousand dollars (\$5,000) per violation, or upon a  
39 second violation for an administrative fine or civil penalty not to  
40 exceed twenty-five thousand dollars (\$25,000) per violation, or



1 upon a third or subsequent violation for an administrative fine or  
2 civil penalty not to exceed two hundred fifty thousand dollars  
3 (\$250,000) per violation and shall be subject to disgorgement of  
4 any proceeds or other consideration obtained as a result of the  
5 violation.

6 (4) Nothing in this subdivision shall be construed as  
7 authorizing an administrative fine or civil penalty under both  
8 paragraphs (2) and (3) for the same violation.

9 4058. This division shall not be construed in a manner that is  
10 inconsistent with the federal Fair Credit Reporting Act (15 U.S.C.  
11 Sec. 1681 et seq.).

12 4059. The provisions of this division shall be severable, and  
13 if any phrase, clause, sentence, or provision is declared to be  
14 invalid or is preempted by federal law or regulation, the validity  
15 of the remainder of this division shall not be affected thereby.

16 SEC. 2. No reimbursement is required by this act pursuant to  
17 Section 6 of Article XIII B of the California Constitution because  
18 the only costs that may be incurred by a local agency or school  
19 district will be incurred because this act creates a new crime or  
20 infraction, eliminates a crime or infraction, or changes the penalty  
21 for a crime or infraction, within the meaning of Section 17556 of  
22 the Government Code, or changes the definition of a crime within  
23 the meaning of Section 6 of Article XIII B of the California  
24 Constitution.

